U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 1 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Rachel Nitorio for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as an "Operations Research Analyst" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, certified by the United States Department of Labor (the DOL). Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum requirements stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the required sixty months of experience in the specialty of "Operations Research Analyst." The director further determined that the beneficiary's experience with her employers, [redacted] and [redacted], could not be combined with her foreign equivalent bachelor's degree from the Philippines to establish that she is a professional holding an advanced degree.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

On appeal, counsel asserts that the regulation at 20 C.F.R. § 656.17(h)(4) allows an employer to specify alternative requirements for the proffered position of "Operations Research Analyst" provided the alternative requirements meet the criteria set forth in the Board of Alien Labor Certification Appeals (BALCA) ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (en banc). Counsel contends that in the *Kellogg* ruling, BALCA determined that where the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job requirements, the employer's alternative requirements are considered to be unlawfully tailored to the alien's qualifications, unless the employer has indicated that that applicants with any suitable combination of education, training, or experience is acceptable. Counsel states that the petitioner listed alternative requirements for the proffered position of "Operations Research Analyst" on the ETA Form 9089 and included the required statement at part H. 14., that "[a]ny suitable combination of education, training, and experience is acceptable.," for the proffered position (*Kellogg* language). Counsel noted that United States Citizenship and Immigration Services (USCIS) had previously approved two separate petitions for the same position of "Operations Research Analyst" that also listed alternative

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

requirements including the requisite *Kellogg* language on the ETA Form 9089 in which he had represented the respective petitioners. Counsel includes copies of the approval notices for these two petitions, copies of the ETA Forms 9089 that were submitted with the approved petitions, and a new letter relating to the applicant's experience in support of the appeal.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The issue in the instant case is whether the beneficiary possessed the required sixty months of experience as an "Operations Research Analyst" or sixty months of experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager," as of the priority date of the ETA Form 9089.

Relying in part on *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983), the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in

fact qualified to fill the certified job offer." *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, at 1309 (9th Cir. 1984).

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d at 1015; *See also K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *See Madany* v. *Smith,* 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

A petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977). S*ee also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the petition has a priority date of May 12, 2011, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. Part H of ETA Form 9089 states in pertinent part that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in Accounting, Commerce, or Business Administration.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months experience in the alternate occupation of "Accountant, Financial Analyst, Auditor, [or] Financial Manager."

H.14. Specific skills or other requirements: "Any suitable combination of education, training and experience is acceptable."

At Part H.11., of the ETA Form 9089, the petitioner described the job duties of "Operations Research Analyst" as follows:

> Under direct supervision, collect, analyze and research data relating to time and cost efficiency of a construction company. Review existing accounting, reporting and data management systems and methods of adequacy. Perform studies to improve the operational and financial effectiveness of current fiscal management and budgeting system. Analyze financial and management information data in an effort to formulate policies that maximize financial efficiency.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a bachelor's degree in business administration with a major in accounting from the in , Philippines, completed in 1979.

The record contains a copy of the beneficiary's Bachelor of Science in Business Administration awarded by the on April 19, 1979, as well as corresponding copies of transcripts from this academic institution.

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[3] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/about/. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://aacraoedge.aacrao.org/register/. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[4] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[5]

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[3] According to its website, "AACRAO is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world."

[4] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[5] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by

According to EDGE, it is reasonable to conclude that the beneficiary's four-year Bachelor of Science in Business Administration from the Philippines is the foreign equivalent to a U.S. bachelor's degree in business administration.

Part J of the labor certification states the following in pertinent part regarding the beneficiary's experience as it relates to the proffered position's requirements:

J.18. Does the alien have the experience required for the requested job opportunity indicated in question H.6? Yes.
J.20. Does the alien have the experience in the alternate occupation specified in question H.10? Yes.
J.21. Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested? No.
J.23. Is the alien currently employed by the petitioning employer? Yes.

The petitioner's answers to the questions posed in J.18., and J.20., are in conflict as the petitioner responded affirmatively when asked whether the beneficiary possessed the required 60 months of experience for the requested job opportunity of "Operations Research Analyst" in J.18., and also responded affirmatively when asked whether the beneficiary possessed the required 60 months of experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager" in J.20. In addition, the petitioner indicated that the beneficiary had not gained any of the qualifying experience with the petitioner in a position substantially comparable to the job opportunity requested in J.21., but responded affirmatively when asked if the beneficiary was currently employed by the petitioner in J.23.

The ETA Form 9089 at Part K reflects that the beneficiary gained qualifying experience in the offered position of "Operations Research Analyst" based upon her employment in this position with the petitioner from October 5, 2010 to May 12, 2011. Nevertheless, representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary's experience with the petitioner cannot be used to qualify the beneficiary for the certified position.[6] Specifically, in response to question J.21., which asks, "Did

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AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

[6] 20 C.F.R. § 656.17 states:

(h) *Job duties and requirements.* (1) The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation

. . . . .

(4)(i) Alternative experience requirements must be substantially equivalent to the primary requirements of the job opportunity for which certification is sought; and

(i) If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

(ii) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).

(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer cannot require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

(i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
(ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?," the petitioner answered "No." The petitioner specifically indicated that 60 months of experience in the job offered is required at H.6., but also indicated that 60 months experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager" is acceptable at H.10. In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially comparable[7] and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the beneficiary indicates that her position with the petitioner was as an "Operations Research Analyst," and the job duties are the same duties as the position offered. Therefore, the experience gained with the petitioner was in the position offered and is substantially comparable as she was performing the same job duties more than 50 percent of the time. According to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position. In addition, even if the beneficiary's employment with the petitioner was considered qualifying experience, such employment would amount to only 7 months of experience in the proffered position of "Operations Research Analyst" rather than the 60 months of experience required by the labor certification. As such, the beneficiary's experience with the petitioner may not be used to qualify the beneficiary for the proffered position and the beneficiary does not possess the 60 months of experience as an "Operations Research Analyst" required by the ETA Form 9089.

On appeal, counsel contends that the inclusion of requisite *Kellogg* language on the ETA Form 9089 allowed the proffered position to be offered with primary requirements as well as alternative requirements. By way of background, the regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

This regulation was intended to incorporate the BALCA ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (en banc), that "where the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job

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> (i) The term ''employer'' means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.
> (ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

[7] A definition of "substantially comparable" is found in the preceding footnote in the paragraph immediately above marked as (ii).

requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications . . . unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable." The statement that an employer will accept applicants with "any suitable combination of education, training or experience" is commonly referred to as "*Kellogg* language."

Previously, the DOL was denying labor certification applications containing alternative requirements in Part H, Question 14, if the application did not contain the *Kellogg* language. However, two BALCA decisions have significantly weakened this requirement. In *Federal Insurance Co.*, 2008-PER-00037 (Feb. 20, 2009), BALCA held that the ETA Form 9089 failed to provide a reasonable means for an employer to include the *Kellogg* language on the labor certification. Therefore, BALCA concluded that the denial of the labor certification for failure to write the *Kellogg* language on the labor certification application violated due process. Also, in *Matter of Agma Systems LLC*, 2009-PER-00132 (BALCA Aug. 6, 2009), BALCA held that the requirement to include *Kellogg* language did not apply when the alternative requirements were "substantially equivalent" to the primary requirements.

Given the history of the *Kellogg* language requirement at 20 C.F.R. § 656.17(h)(4)(ii), the AAO does not generally interpret this phrase when included as a response to Part H.14., to mean that the employer would accept lesser qualifications than the stated primary and alternative requirements on the labor certification. To do so would make the actual minimum requirements of the offered position impossible to discern, it would render largely meaningless the stated primary and alternative requirements of the offered position on the labor certification, and it would potentially make any labor certification with alternative requirements ineligible for classification as an advanced degree professional. In other words, the AAO does not consider the presence of *Kellogg* language in a labor certification to have any material effect on the interpretation of the minimum requirements of the job.

Next, it must be determined whether the beneficiary possesses 60 months of experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager."

Part K of the labor certification also reflects that the beneficiary was employed as a finance manager by the distributor, [redacted] in [redacted], Philippines, from September 8, 2003 to April 15, 2006, and as an accounting supervisor for [redacted], in [redacted], Philippines from July 1, 2001 to August 31, 2003. No other experience is listed.

The record contains a letter dated May 11, 2011, with the letterhead of [redacted] in [redacted] Philippines, that is signed and certified by human resource manager [redacted] In this letter, [redacted] stated that the beneficiary held the position of "…Finance Manager in the company and performed the following functions:

Accounting Supervisor
November 2, 2000 to August 31, 2003

- Responsible for interviewing, hiring, training and evaluating employees.
- Preparation of work schedules, providing orientation to newly hired employees and assign workers to specific duties.
- Oversee the work to ensure that it is proceeding on schedule and meeting established quality standards.
- Ensure that customers receive satisfactory service and quality goods.
- Attend to customer inquiries, deal with complaints, and coordinate with customers regarding installation of dispensers.
- Review inventory and sales records, coordinate sales promotions.
- Implement policies, goals, and procedures. Promote sales and public relations.
- Acted as liaison officer between the administrative support staff and the managerial staff.
- Implementing new company policies / restructuring the workflow in a department."

statement that the beneficiary held the position of finance manager and performed the functions of accounting supervisor for this enterprise is questionable. In addition, the job duties attributed to the beneficiary by are a wide range of functions including those of a supervisor of administrative support staff involved in the "installation of dispensers," customer service manager, and sales manager, rather than the customary duties of a finance manager or an accounting supervisor. Finally, the date, November 2, 2000, listed by as the date the beneficiary began working for directly conflicts with the date, July 1, 2001, listed at Part K of the ETA Form as the date the beneficiary began working for this company. This discrepancy raises questions regarding the exact date the beneficiary began her employment with

In response to the Notice of Intent to Deny issued by the director on December 9, 2011, counsel claimed that he made a clerical error when entering the dates of the beneficiary's employment with on the ETA Form 9089 as the start date for the beneficiary's employment should have been listed as November 2, 2000, rather than July 1, 2001. However, counsel failed to include any independent evidence, such as payroll or tax records establishing the exact date the beneficiary started her employment with , that would corroborate his explanation that he had made an error when entering the date on the labor certification. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also contains a letter dated May 12, 2011, with the letterhead of in , Philippines, that is signed by human resources manager

. In this letter, noted that the beneficiary had been employed by this enterprise from September 8, 2003 to April 15, 2006, and stated the following in pertinent part:

> As a Finance Manager, she was responsible for the financial administration, analysis and implementation of ideas for the overall organizational efficiency and effective communication.
>
> fulfilled her diverse tasks to our full satisfaction. Her performance with regard to the above mentioned points were superior and well beyond our company standards.
>
> During her term, she attended several one to one meeting with key customers to improve our account receivables, initiated promotional tie-ups, and foster better partnership to enhance the business. [sic]

The regulation at 8 C.F.R. § 204.5(g)(1), which sets forth the substantive requirements of letters from former employers. The regulation states, in pertinent part, as follows:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The letter signed by and dated May 12, 2011, attesting to the beneficiary's employment for does not meet the regulatory requirements insofar as it fails to provide "a specific description of the duties performed by the alien." *Id.* This letter provides the title of the beneficiary's position with only minimal details as to specific duties performed. Thus, the letter signed by and dated May 12, 2011, attesting to the beneficiary's employment for cannot be considered as sufficient and probative evidence establishing that the beneficiary's employment for constituted qualifying experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager."

On appeal, counsel submits a new notarized letter that lacks any letterhead, is dated January 18, 2012, and is signed by human resource manager . In this third letter, states that she wishes to clarify her previous letters regarding the beneficiary's duties during her employment as Finance Manager for from September 9, 2003 to April 15, 2006, and as Finance Manager and Accounting Supervisor for from November 2, 2000 to August 31, 2003. notes that in addition to the duties previously described in her letters dated May 11, 2011 and May 12, 2011, the beneficiary performed additional duties for both and as follows:

- Directed preparation of annual financial reports. Directed the organization of budget to meet its goals.

- Managed annual external audit. Oversaw the firm's issuance of credit to the customers concerned.
- Established credit rating criteria for newly approved customers.
- Determined credit rating ceiling depending on the sales volume.
- Implemented cash management strategies.
- Developed and analyzed information to assess the current and future financial issues of the company.

Although description of these additional duties appears to describe some of the duties performed by a finance manager, fails to provide any explanation as to why this revised listing of duties attributed to the beneficiary during her employment with and was not included in her previous letters dated May 11, 2011 and May 12, 2011, if in fact the beneficiary had performed these additional duties. In addition, has provided three separate letters on three different types of letterhead (May 11, 2011- May 12, 2011- and January 18, 2012- no letterhead) all dated in a period ranging just over seven months in which attested to the beneficiary's experience based upon position as human resource manager for these two companies. However, fails to provide any explanation as to how she occupied the position of human resource manager with two separate companies almost simultaneously on May 11, 2011 and May, 12, 2011, but then just over seven months later provides a new letter lacking any letterhead that includes a revised listing of the beneficiary's duties with both and It appears that revised listing of additional duties attributable to the beneficiary in the letter dated January 18, 2012, is an attempt to change the previous descriptions of the beneficiary's duties for both and as originally contained in the letters dated May 11, 2011 and May 12, 2011, so that her experience with these companies would qualify as experience as a finance manager and overcome the basis of ineligibility relied upon by the director to deny the petition. It is emphasized that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements, after the fact. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

The inconsistencies and discrepancies described above raise questions regarding the beneficiary's claimed employment for both and and the credibility of the three letters signed by that have been submitted in support of such employment. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds that the petitioner has failed to demonstrate that the beneficiary meets either the primary job requirements or the alternate job requirements on the labor certification. Specifically, the beneficiary does not possess the 60 months of experience as an "Operations Research Analyst" required by the ETA Form 9089 as of the priority date. Furthermore, the record is lacking sufficient

credible evidence establishing that the beneficiary possesses the sixty months of experience in the alternate occupations of "Accountant, Financial Analyst, Auditor, [or] Financial Manager," required by the ETA From 9089 as of the priority date. For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.